



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 6, 1998

The Honorable Thomas L. Bridges  
District Attorney  
36<sup>th</sup> Judicial District of Texas  
Aransas and San Patricio Counties  
P.O. Box 1393  
Sinton, Texas 78387

OR98-1141

Dear Mr. Bridges:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115258.

The District Attorney's Office for Aransas and San Patricio counties received a request for all information concerning Erasmo Flores, Sr. and a specific incident dated June 6, 1996 through November 1, 1997. You explain that the request involves a criminal prosecution currently on appeal. You indicate that you will release "copies of already public documents." You state, however, that "[t]he requesting party is the wife of the defendant/appellant in the litigation. . . . The defendant/appellant is incarcerated pending the appeal and not qualified to receive the documents requested. By having the wife act as requestor, defendant/appellant and/or his attorney seek to circumvent the rules of criminal discovery by use of the Texas Open Records Act."

Section 552.028 of the Government Code permits governmental bodies to decline to accept or comply with requests for information submitted by inmates. Section 552.028 states:

(a) A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

(b) Subsection (a) does not prohibit a governmental body from disclosing to an individual described by that subsection

information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.<sup>1</sup>

Gov't Code § 552.028 (footnote added). You suggest that because the person submitting the request is asking on behalf of a person who is in prison, the requestor is attempting to circumvent section 552.028. The requestor is in effect acting as an inmate's agent. We believe that you need not comply with the instant request, as we will explain.

First, we are bound to construe statutes in ways so as not to produce an absurd or unreasonable result. *City of Wilmer v. Laidlaw Waste Sys. (Dallas), Inc.*, 890 S.W.2d 459, 465 (Tex. App.—Dallas 1994), *aff'd*, 904 S.W.2d 656 (Tex. 1995); *see State Highway Dept. v. Gorham*, 162 S.W.2d 934 (Tex. 1942); *Anderson v. Penix*, 161 S.W.2d 455 (Tex. 1942). A construction of section 552.028 that would permit a governmental body to decline to comply with a request submitted by an inmate, on the one hand, but that would require the governmental body to comply with one submitted by an inmate's agent, on the other, is absurd on its face. We decline to adopt such a construction.

Second, construing the provision to require a governmental body to comply with a request submitted by an inmate's agent while at the same time permitting that governmental body to ignore a request submitted by the inmate himself would entail a manifest circumvention of the provision and frustrate the obvious intent of the legislature when it enacted section 552.028. We conclude that section 552.028 of the Government Code, which permits a governmental body to decline to accept or comply with a request for information that is submitted by an individual who is imprisoned or confined in a correctional facility, also permits a governmental body to decline to accept or comply with a request that is submitted by that person's agent.

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<sup>1</sup>Section 1.07(a)(14) of the Penal Code provides:

"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 115258

Enclosures: Submitted documents

cc: Ms. Teresa Flores  
P.O. Box 366  
Skidmore, Texas 78389  
(w/o enclosures)